

More Robinson book. 46

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R E M A R K S

O N T H E

T R E A T Y

O F

Amity, Navigation, and Commerce,

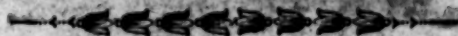
CONCLUDED BETWEEN

LORD GRENVILLE AND MR. JAY,

ON THE PART OF

Great Britain and the United States,

R E S P E C T I V E L Y.



Sic vos non vobis.—Virgil.

Not for yourselves, ye merchants, shall ye toil,
Not for yourselves, ye farmers, plough the foil,
Not for yourselves, ye soldiers, laurels gain,
Not for yourselves, ye sailors, brave the main.—*Anonymous.*

“ By presenting many propositions at once, which are to be *voted* for in the lump, they hide what is destined to promote their own private views; or give a colour to it by joining it with things which they know will take hold of the mind of the people.”

De Lolme on the British Constitution.



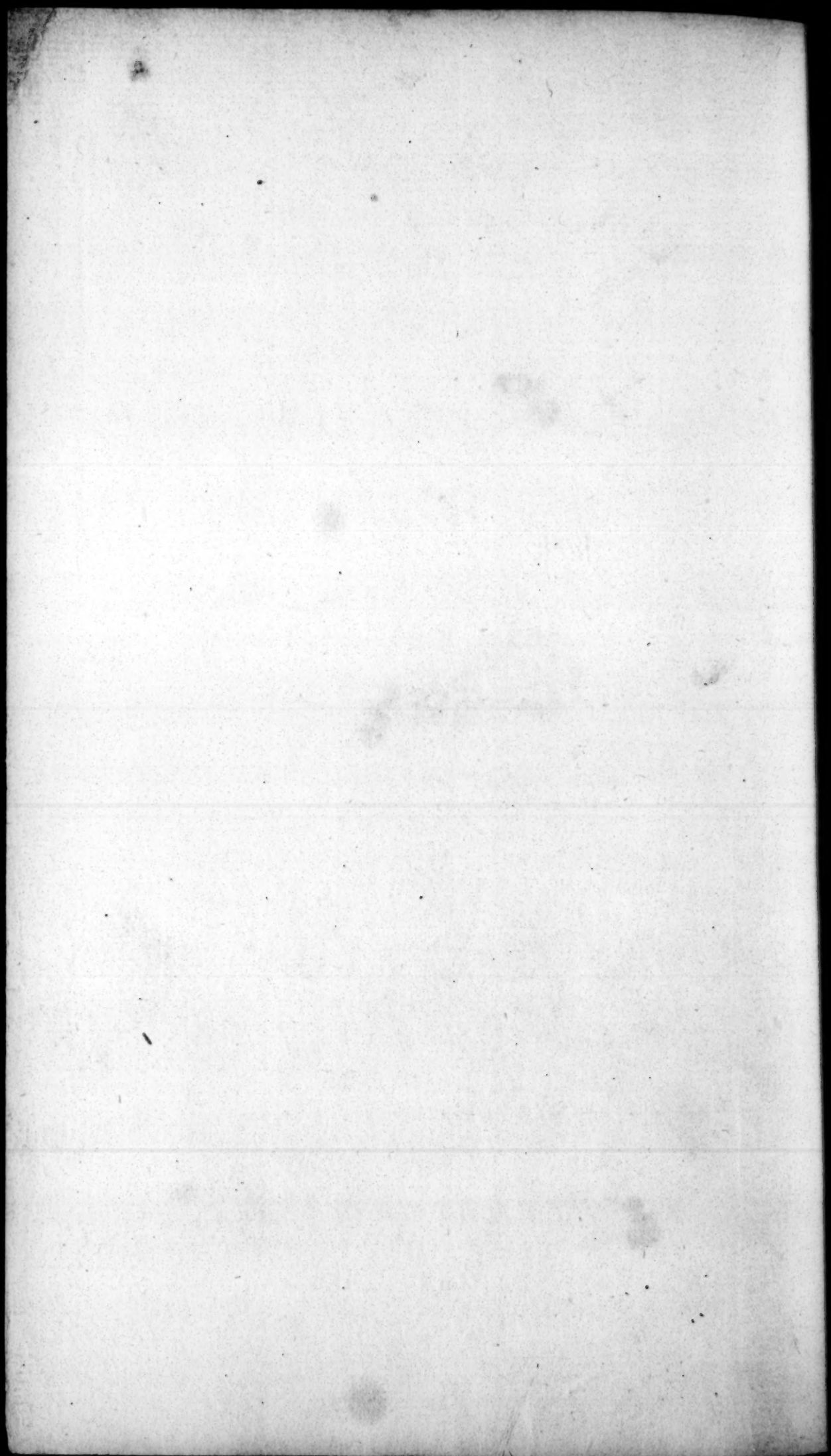
BY A CITIZEN OF THE UNITED STATES.

P H I L A D E L P H I A :

PRINTED BY HENRY TUCKNISS,

FOR MATHEW CAREY, NO. 118, MARKET-STREET.

—JANUARY 20, 1796.—



R

2

R E M A R K S

O N T H E

T R E A T Y

O F

Amity, Navigation, and Commerce,

CONCLUDED BETWEEN

LORD GRENVILLE AND MR. JAY,

ON THE PART OF

Great Britain and the United States,

RESPECTIVELY.



Sic vos non vobis.—Virgil.

Not for yourselves, ye merchants, shall ye toil,
Not for yourselves, ye farmers, plough the soil,
Not for yourselves, ye soldiers, laurels gain,
Not for yourselves, ye sailors, brave the main.—*Anonymous.*

“ By presenting many propositions at once, which are to be *voted for in the lump*, they hide what is destined to promote their own private views; or give a colour to it by *joining it with things* which they know will *take hold of* the mind of the people.”

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—JANUARY 20, 1796.—

But, before entering into a discussion of the articles of the treaty, it may not be improper to advert, not only to existing circumstances at the time it was concluded, but to some antecedent events, which may be presumed to have had some operation upon the minds of the nations, whose mutual friendship is, by this instrument, proposed to be conciliated, and perpetually cemented. For a treaty (so far as relates to a free republic at least) ought to be considered as the act of the nation, and not merely of the government, only; or, in other words, of the parties who conclude, sign, and ratify them. To this end, due attention should be paid to the prevailing sentiment of the nation, so as to remove every obstacle to that cordiality, and unfeigned friendship, which treaties of amity are intended to promote.

It is just twenty years since the United States of America, stimulated by the tyrannical usurpations of the present king of Great Britain, declared the good people of these states absolved from their allegiance to that prince, and that all political connexion with Great Britain ought to be totally dissolved. A cruel civil war was waged against them during a period of eight years, the calamities of which were heightened by every wanton act of depredation, oppression, and insult, that rapacity, cruelty, and a vindictive spirit could prompt men to commit. Our slaves were excited to rebel against us; the savages on our frontiers were basely stimulated to add, to the sanguinary measures of the British enemy, their own more inhuman mode of warfare. Our towns were wantonly consumed to ashes, and our country every where laid waste. Our property was seized for the use of the armies of our enemies; or destroyed, without compensation, and without compunction or restraint: Thousands of our negroes, the cultivators of the soil in the southern states (and forming the greater part of the moveable property of their masters) were enticed or forced away from their service—Eighty thousand of our fellow citizens are supposed to have fallen victims to the offended majesty of that vindictive monarch, whose name was more execrated among us, than ever Nero's was at Rome. Inability to prosecute the war longer, produced a peace; but it was peace without forgiveness, without friendship, and without sincerity. During the long course of hostilities, every sentiment of regard and of mutual confidence had been extinguished on the part of both nations, and the peace concluded between them, was rather calculated to perpetuate, than to extinguish the remembrance of their mutual animosity. The citizens of the middle and southern states complained that their particular interests had

been overlooked, or sacrificed, by some of the articles of the treaty. The northern states found their trade abridged, by the very instrument which they supposed would have secured its unlimited extension. Thus even the treaty of peace had no other recommendation, in the eyes of the people of America, than the termination of hostility. His Britannic majesty, on the other hand, appears not to have entered into it with good faith. The western posts, which were to have been delivered up "with all convenient speed," were forcibly detained in the possession of his troops; and the negroes and other property taken from the people of America, were, in direct violation of the treaty, carried away without compensation. An equal disposition to evade, or violate some of the articles of the treaty was attributed to several of the states, and mutual complaints and recriminations took place between the two nations. The restraints imposed upon our West India commerce by his Britannic majesty; his *supposed* ill offices towards us, in exciting the depredations of the Barbary states upon our commerce; and in fomenting discontents among the Indian nations, and even stimulating and aiding them in acts of hostility against us, occasioned those wounds to inflame and fester anew, which had been, at best, imperfectly cicatrised.

The aversion of his Britannic majesty to enter into any commercial treaty with the United States, had manifested itself, in the rejection of all overtures made for that purpose by the present vice-president of the United States, who was sent thither to effect such a negotiation, not long after the conclusion of the peace.—The adoption of the federal constitution removed all those obstacles, which, it was pretended, prevented the court of Great Britain from entering into negotiations with us. It did more.—It removed every barrier to the full and complete execution of the treaty of peace, on the part of the United States, by rendering that treaty a part of the supreme law of the land: the federal courts, in their decisions, manifested the most unequivocal disposition to give to the treaty the most *favorable* construction on behalf of British creditors.—It was the expectation of all, that the energy of the federal government would not fail to extort from his Britannic majesty an equal compliance with the treaty on his part.

The constitution, at the time of its adoption, was regarded as the guarantee of a free trade with the West Indies, and with every other part of the world; it soon became matter of wonder and of dissatisfaction, that it had not produced these effects. It was finally made known that the executive of the United States had taken measures to discover the sentiments of

the British court on the subject of a treaty of commerce, and that the proposition still continued to be treated with disrespect.—In the mean time, France was engaged in a revolution, the principles of which were supposed to bear so great an analogy to our own, that every American felt himself interested in her success.—Our prayers were continually offered up in her behalf, and it was concluded that the cords of amity would be drawn as closely as possible between the two republics.—His Britannic majesty was not long in joining the alliance formed among the enemies of the new republic. America soon found herself made a party in the war, *by her sufferings*: the spoliations on our commerce are well known; they have been felt through every part of the United States. Not only our vessels with their cargoes were seized and confiscated, because engaged in commerce with the enemies of his Britannic majesty; but our citizens were abused in their persons, imprisoned or impressed into the service of a sovereign whom they detested, under pretext that they were his subjects. Innumerable acts of piracy were committed by a swarm of privateers which infested our coasts; nor was the insolence practised by his Britannic majesty's sea officers inferior to the depredations of the privateers. Stimulated by resentment, and a desire of retaliation, some of the citizens of America took commissions from, or entered into the service of, their sister republic. They were prosecuted for exercising a natural right, not repugnant to any treaty, or known law of the land. These prosecutions were, by the sufferers and their friends, considered as an act of supererogation in our government, founded on a partiality to British interest, in opposition to that of France. Every act of concession or conciliation on the part of the United States, seemed to give new life and vigour to the arrogance, insolence, and depredations of the British ships of war and cruisers. The Indians, whose hostile disposition towards us was supposed to be the effect of British perfidy, prosecuted the war against us in a stile altogether new, and gave reason to presume that they were not only aided with arms, ammunition, and warlike stores, by the British government, but that they were actually assisted by the officers and militia, if not by the regular troops of that nation. CONGRESS, to whom it belongs to decide upon a *just cause of war*, and to *regulate commerce*, roused by so many reiterated acts of aggression, had resolved upon some cautionary measures to secure indemnification for injury, and to retaliate upon a nation from whom so many vexations were daily received. The representatives of the people concurred in the measures proposed, by a great majority—the senate were divided—

the vice-president held *the balance* in his hand, and the scale preponderated against the representatives of the people. At this moment of effervescence in the public mind, the late envoy extraordinary was appointed; the object of his mission was supposed to be a demand of reparation of injuries, and a compliance with the terms of the violated treaty of peace.

From this short recapitulation of preceding events, it will appear, that the public mind was by no means prepared to enter, with cordiality, into a state of amity with a nation whose government had, for twenty years, incessantly persecuted the United States, either by open acts of hostility, or the insidious arts of secret animosity. It was, therefore, reasonably expected, that a treaty, whose object was to bind the two nations in amity with each other, would contain within it every thing necessary to soften asperity—to subdue resentment—to satisfy claims, and to conciliate affection. To determine how far this expectation has been fulfilled by the present treaty, it will be necessary, not only to state what it *contains*, but also, what it does *not contain*. I shall begin with the former; and, in order to do it with the more regularity, I shall take it article by article.

The preamble states the motives to the treaty to be, the desire “ of terminating the differences between his Britannic majesty and the United States, in such a manner, as, *without reference to the merits of their respective complaints and pretensions*, may be best calculated to produce mutual satisfaction and good understanding.” Such a preamble would either lead us to expect the most *liberal concessions* in favor of the United States, or a *total dereliction* of their complaints by the envoy extraordinary. On the part of his Britannic majesty such a waiver might be considered, if not a mark of great magnanimity, at least, of great condescension, whilst his ships of war and privateers were in the full career of plunder on the commerce of our unresisting citizens. Nor can it be altogether denied, that his majesty, as well as the United States, had some cause to murmur at the events of his reign:—He had lost an immense territory, which he had regarded as his hereditary right, *jure divino*, and had spent above an hundred millions sterling of his subjects’ money in the attempt to retain it in subjection to him. He might be compared to an unlucky sportsman whose over-charged gun had bursted, burnt his fingers, given him a sound douse in the chaps, and knock’d out half a dozen of his teeth, in attempting to shoot a partridge:—and America to the poor bird itself, which had got a grievous wound, in spite of the unskilfulness of the awkward

marksman. Considering, however, the presumable object of the mission of the envoy extraordinary, it appears somewhat unaccountable upon what grounds he could suppose himself authorized to relinquish the discussion of the complaints of the United States, unless indeed he apprehended that his Britannic majesty's choler might be so far roused by it, as again to reject a negociation, and compel him to return to America *re infecta* :* or, perhaps, he was sensible, that in the adjustment of such a *variety of claims as America was entitled to insist on*, the business might be so far procrastinated as to lessen the glory of the achievement; or, perhaps, *retard* his return to his native country, in time to accept that *accumulation of honor* which there awaited him. But let us now proceed to examine the treaty, some of the articles of which I shall pass over without observation, as being either of little moment, or customary in similar treaties; whilst upon some others I may wish to detain the reader's attention.

I. Of eight and twenty articles which the treaty contains, the first ten are declared to be *permanent*; the remainder are of limited duration. The first stipulates, in the ordinary form, that there shall be peace, "and true and sincere friendship between his Britannic majesty and his successors, and the United States, and between the people, respectively, without exception of persons or places."—To render this article effectual, it will be necessary that the subsequent articles should contain *all such things* as "are calculated to produce mutual satisfaction and good understanding between the nations:" otherwise, this article will ever remain in the same state of *inexecution*, as those relating to the *negroes* and the *western posts*, in the treaty of peace.

II. The second article stipulates that his Britannic majesty *will* withdraw all his troops and garrisons from all posts and places within the United States, on or before the first day of June, 1796. This, by the treaty of peace, ought to have been done, *at least, a dozen years ago*; and it appears somewhat strange that the immediate performance of it was not made a condition, precedent to any further negociation, except for reparation for the spoliations on our commerce, &c. for how can we be assured that his Britannic majesty *will* observe more good faith in the performance of this treaty, than the former, if an excuse can be found to evade it? The only difference

* Whilst the treaty was in discussion before the senate, a certain gentleman, high in office, who was once ambassador at the British court, was heard to declare, that *he* could have procured a *better* treaty, but declined doing so, because he thought it not sufficiently advantageous to America.

that this part of the second article makes between our present and former situation is, that the detention of the posts, *hitherto*, is evidently *sanctioned* by the present treaty; and all *compensation* for former breaches of faith, and aggressions in this respect, most *generously waived*, on the part of the United States; it must be confessed, however, that this article furnishes an interpretation of the words "*with all convenient speed*," in the former treaty; which, in all future negotiations, with his Britannic majesty, may be understood to mean *a dozen years*.

The same article provides that the settlers and traders, within the precincts or jurisdiction of the western posts, may *continue to reside there, without being compelled to become citizens of the United States, or to take any oaths of allegiance to the government thereof*, or remove and dispose of their lands and other property, at their election. This, as it respects traders, and other *transient* persons, is just and proper: as it relates to *landholders* it will be made the subject of future remark, when we examine the ninth article.

III. The third article contains a variety of stipulations, some of which appear to be reciprocally liberal, whilst others manifest a spirit of accommodation and concession, on the part of the United States, which very few are likely to feel, in any degree, equal to the envoy extraordinary.—If it be true that the most important stations for carrying on the fur trade, &c. are within the territories of the United States, which, I am told, is the case, Great Britain will be no small gainer by that equal intercourse, which this article permits upon the lakes and the waters thereof, as also the free use of the Mississippi,* and the portage places in the territories of the United States and Great Britain, respectively. But the *total exclusion of American vessels* from the sea-ports, harbours, creeks, and rivers of the British American territories on the Atlantic, gives to this article a very disadvantageous turn for the commercial interests of the United States; thereby securing to the British nation a *decided and perpetual pre-eminence* over them in the trade with the north-western parts of the American republic; since all articles for exportation to foreign parts, must either go down the St. Lawrence and be exported to *Britain*, in *British* ships, or be *brought over land* to the head waters of Hudson's river, or some other less convenient communication with the Atlantic ports of the United States.—Foreign goods must be transported

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* It may, with no small propriety, be asked, on what part of the eastern side of the Mississippi his Britannic majesty possesses any territory? I know of none; and it might, perhaps, puzzle the envoy extraordinary himself to point it out.

to the western territories in like manner. The communication from the lakes to Quebec, by the river St. Lawrence, is so much easier than to New York, by the river Hudson,* and the advantages (if I am rightly informed) in every respect so much greater, as to preclude all competition on the part of the United States. Hence it seems probable that Great Britain will continue to monopolize the trade on the lakes, and finally, the whole trade of the American north western territory. Other causes than those already mentioned will contribute to promote this. *British traders* are already settled at the *most advantageous stations* for carrying on commerce, and probably have possessed themselves of *all the land* at those places, which the preceding article secures to them *for ever*. An American going there to settle would find himself under all the disadvantages of attempting to establish himself in a foreign country, and exposed to all the ill offices which jealousy could suggest.

I shall not here enquire how far the United States had a right to insist on the free navigation of the river St. Lawrence, at least for their vessels bound from one part of the United States to another, reserving that question for another place; but it is observable, that while our vessels are totally excluded from the Atlantic ports of Canada, &c. the vessels of those countries may freely navigate our rivers† as far as the highest ports of entry for foreign ships, in any part of the United States. This want of reciprocity will be excused by the advocates for the treaty, by a general reference to colonial laws; to which I shall offer an answer in its proper place.

Commercial regulations, not founded in experience, can never be adopted with too much caution. They ought never to find a place in a perpetual treaty; for whatever inconvenience or disadvantage result from them, it cannot be removed without hazarding a war; since it can never be expected that a commercial nation, tenacious of her interests, will ever resign an advantage that is once secured by a perpetual treaty. Such a nation is the British.

* Nothing appears more questionable than that policy, which lays open the navigation of our rivers to those maritime powers with whom we may be eventually engaged in war. Experience *might* have taught us this truth in the course of our war with Great Britain.

† The writer, for want of a correct map, and description of those parts of the United States, is unable to descend to such particulars as would illustrate this part of his subject.

IV. and V. As these articles relate altogether to an amicable adjustment of some doubts respecting our boundaries, I presume they are proper enough for that purpose.*

VI. The sixth article recites, that it is alleged, by divers of his majesty's subjects, that debts, *bona fide* contracted before the peace, still remain owing to them by the citizens of the United States, "and, that, by the operation of various lawful impediments since the peace," the recovery has been delayed, and the value and security of the debt lessened. It stipulates, therefore, for the appointment of a board of commissioners, part *British* and part *American*, to examine all complaints referred to them, "and to take into consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same respectively, according to *equity* and justice;" they may also *examine all persons that may come before them*, and receive in evidence written depositions, books, or papers, or *copies* or *extracts* thereof, duly authenticated; and their award shall, in all cases, be *final and conclusive*, both as to the justice of the claim, and the amount to be paid to the creditor; which amount the United States undertake *to cause* to be paid in specie, on condition of such releases, or *assignments* to be made by the creditor, as the commissioners may direct.

I have been greatly at a loss to suppose a case to which this article can apply; at length, however, I think I have stumbled upon two, perhaps a third—but I am not presumptuous enough to insist that I am right in either. The first, I have supposed to be the case of a debt confiscated or sequestered during the war, where the debtor has pleaded such confiscation or sequestration in bar of the plaintiff's claim. When this question was discussed in the federal court of Virginia, the chief justice of the United States gave it as his opinion, that the treaty of peace *annulled* all the acts of sequestration passed by the several states, *though, at that time sovereign and independent, and avoided all acts done in pursuance thereof.*† A majority of the court were of a *different* opinion. Whether it was the intention of the envoy extraordinary to restore to the opinion of the chief justice that weight, which it had lost on the occasion alluded to, I will not pretend to decide; but if my conjecture be just, the British claimant

* See this subject properly discussed, in the American Remembrancer, vol. II. page 116.

† The political morality of the states was highly impeached for their conduct in confiscating and sequestering British property, debts, &c. It seems at this day forgotten, that on the 27th of November, 1777, CONGRESS *earnestly recommended* that measure to the several states, as appears by their *journals* of that date.

malgre the decision of a constitutional court of judicature may now rest secure of his claim, without any abatement. The second case applicable to this article, I presume, will arise from the operation of an act of the legislature of Virginia, passed in the year 1787, repealing all acts of assembly which prohibited the recovery of British debts, with a suspending clause, *until the British posts in the United States should be delivered up*, and measures taken for the *further fulfilment* of the treaty, by *delivering up the negroes* of the citizens of that state, *taken away contrary to the seventh article of the treaty of peace*. How far this legal impediment might operate to delay the debt of a British creditor, or to lessen its value, or security, I cannot presume to say; yet I should conclude that the adoption of the federal constitution a few months after, did very effectually remove this legal impediment. The third case, I am inclined, from the special wording of this article, to suppose, refers to those cases where suits have been brought, and a verdict been given for the defendant; or the principal debt *recovered* either without interest (if any such case has happened) or with a *deduction of interest during the war*. In these latter cases, the chief justice of the United States had instructed the jury to give interest without any deduction. They uniformly disregarded the instruction; it was necessary to provide some remedy in this, as well as in the first mentioned case, and it is probable that the opinion of the chief justice of the United States will be paid due respect to, by the commissioners to be appointed in virtue of this article. The liberality of the envoy extraordinary in this article, evinces, at the same time, the most scrupulous regard to the punctual adherence to the spirit of treaties, on the part of the United States, and his extreme politeness and generosity in passing over in silence those causes, which gave rise to the *legal impediments* thus happily removed. Nothing renders a treaty more respectable than such exalted instances of magnanimity in the framers of it.*

* Since this pamphlet was transcribed for the press, I have had an opportunity of conversing with an intelligent and well-informed gentleman, who has suggested that an *additional*, and even the *principal* object of the sixth article, probably is, to enable *British creditors* to obtain compensation from the government of the United States, for the *depreciation of money actually received by themselves or their agents, during the war*; which payments, according to the *general laws* of the land, as well between citizens as others, were to be rated according to the nominal amount, without any regard to the actual depreciation of money at the time of payment. And further, to *revive and establish all claims* on the part of *British subjects*, against citizens of the United States, at the commencement of the *revolution war*, the recovery of which was suspended, during the continuance of the

It has been hinted that this court of commissioners (a part of whom, as was before observed, are to be *British*) who are thus to liquidate legal claims by one individual against another, is an encroachment upon the functions of the federal judiciary, and a violation of the constitution. The question is delicate and important; there is, moreover, an obscurity in this article, which makes it difficult to ascertain its real import. It may not be improper to notice some parts of it, with a view to the discussion of this question.—1st, The award of the commissioners shall be *final* in all cases, *both as to the justice of the claim*, and the amount to be paid the creditor. 2d, The United States undertake to *cause* the sum awarded to be paid, &c. on condition of such *releases* or *assignments* to be given by the creditor, as the commissioners may direct—Is it meant that the award shall be final and conclusive between the *creditor*, and the original debtor? If so, he must be made a *party defendant*, and that, I presume, by regular *process*: he must be heard in his defence; he ought to have *compulsory process* to procure the attendance of *witnesses*; the truth of the *facts put in issue are to be tried and determined* by the commissioners. IT BELONGS TO THE CONSTITUTIONAL COURTS TO DO ALL THESE THINGS; and

war, by the creditors themselves, being then considered or declared alien enemies, and, as such, incapable of suing in our courts. This *legal impediment* having lessened the value, or diminished the security of their debts, they now claim an indemnification, for the same, against the United States. If these conjectures be well-founded, and I see no reason to doubt them, how much better was it to have been a *TORY*, at that time, than a *WHIG*!!! How many American *WHIGS* lost their *debts*, nay, their *whole estates*, by the operation of those very laws, which eventually will have *secured the debts of their enemies*! This article, it is supposed, was made a precedent condition to the admission of the *seventh*, relating to compensation to be made for *spoliations* upon our commerce, to which this *counterpoise* was *previously* secured.—When we recollect that nine-tenths of these last-mentioned claims, on the part of *British* creditors, rest upon no other evidence than old mercantile ledgers and journals, often *most inaccurately*, and *not always most fairly* kept; that the commissioners are *not* bound to proceed upon *legal testimony* or *evidence, only*, but according to *circumstances*; that they may receive *copies* or *extracts*, even of *books* and *papers*, without producing either the *original* or a *full copy*; that the *debtor*, in these cases (unless he be made a *party defendant*, as in case of a suit) will not appear (even if called upon, and, in most instances, cannot be found) to contest the justice of the claim; and that there is an equal chance that a *majority* of these commissioners will be *British*; there can be little reason to doubt that the operation of this article will be *fully adequate to countervail* (if I may be permitted to borrow a diplomatic phrase from another part of the treaty) all the advantages which we are flattered with the hopes of, from the *seventh* article. Add to this, that every conjecture, respecting the *intended* operation and effect of this article, authorises the conclusion, that this *court of commissioners* is to be *paramount* to the *constitutional courts*, both of the several states, and of the federal government; that it may examine *matters of fact* without the aid of a *jury*; and may *re-examine matters of fact* tried by a *jury*, *contrary* to the rules of the *common law*, and *contrary* to the *twelfth* article of the ratified *amendments to the constitution*.

the *trial of matters of fact* put in issue must there be by a JURY. Again, the United States undertake to *cause* the money awarded to be paid. How? By process of execution against the defendant's body or estate? Or, out of the treasury of the United States, trusting for reimbursement to the assignment from the creditor? How are they to recover in virtue of this assignment? By harrassing the debtor with a new suit, or is he bound to all intents and purposes by the award of the Commissioners? These things are difficult to be understood, and still more difficult to reconcile to that clause of the constitution, which declares that the judiciary power of the United States shall be *vested in one supreme court*, and such inferior courts as *congress* may, from time to time, *establish*; that the *judges* shall hold their offices *during good behaviour*; that they shall take an oath to support the constitution of the United States; and that the jurisdiction of these courts shall extend to *all cases in law and equity* arising under the constitution, or laws of the United States, and *treaties made*, or *which shall be made* under their authority. The great tenderness of the envoy extraordinary for the case of British creditors, seems to have made him forget that he presided in one of those courts, whose jurisdiction extends to *all cases arising under treaties*; a circumstance which can only be attributed to his being so much engrossed by his *new office*, as not only to forget the *functions and duties of that which he had left behind*, but even the *constitution of his country*.

VII. The succeeding article relates to the compensation to be made to the citizens of the United States, for the spoliations and depredations committed on our commerce, and to the subjects of Great Britain for such captures as have been made within the jurisdiction of the United States, or by vessels armed therein. For this purpose a similar board of commissioners, with nearly similar powers, are to sit in LONDON, who are to decide the claims referred to them according to justice, equity, and the laws of nations; and the British government undertakes to pay the sum awarded to the claimants in specie, without deduction. But it would seem that the commissioners are not to take cognizance of any cases, but such wherein adequate compensation cannot *be now actually obtained in the ordinary courts of justice*; with a further exception of such cases, where the losses have been occasioned by the manifest delay, negligence, or wilful omission of the claimants.

Of all the injuries to which mankind are exposed, those committed on the *high seas* are most easily perpetrated, and most difficult to be prevented, or punished. The conduct of *privateersmen* differs in nothing from that of *pirates*, except in

the circumstance of obtaining a previous licence to exercise their nefarious practices. That of the commanders of ships of war but too often partakes more of the insolence of a *hasbaw* than the courtesy of a soldier of honor. The spoliations committed on the property of the citizens of America by these two classes of men, must have been often attended with circumstances of inconvenience to the sufferers, far beyond the apparent amount of the injury offered. I have known a profitable voyage defeated, and the vessel finally lost, by being plundered of a few sail-needles, and twine, to the value of less than four dollars. The detention of an hour, or being turned out of her course for a day, may prove equally fatal to a merchant ship. These are injuries for which no reparation in damages, estimated merely according to the value of the thing taken, or the time of detention, can make adequate satisfaction; acts of depredation and violence committed by persons unknown, to whose residence we are strangers, or whose residence is at too great a distance to follow them in hopes of satisfaction, are frequently submitted to, from despair of obtaining any compensation. Thus it will happen that a thousand instances of oppression will remain unatoned for, from the nature of the injury itself, and the place where offered. The immense distance to which the claimants must repair, to prosecute their claims, whether by original action, by appeal, or by reference to this board of commissioners, will be found, in three cases out of four, an insurmountable obstacle to the full attainment of justice. Had the commissioners been appointed to sit in any part of the United States, or even in one of the West India islands, instead of *London*, the probability of reparation to the sufferers would have been much increased. Let the operation of this article be ever so favorable to the claimants, there must always remain a very considerable balance unsatisfied. The liberality of the United States in the case of captures made within their jurisdiction, &c. seems to have been more readily accepted, than copied by the British negociator.

VIII. and IX. Article the eighth relating solely to the compensation to be made to the several boards of commissioners, I shall pass it over without observation. The ninth, however, deserves no small attention—It is thereby agreed, that British subjects and American citizens who *now* hold lands in America, and Great Britain, respectively, shall continue to hold the same, and may grant, sell, or devise the same to whom they will, in like manner as if they were natives; and that *neither they* nor their *heirs* or *assigns* shall be regarded as *aliens*, so far as may respect the said lands, and the legal remedies incident thereto.

According to the principles laid down in Calvin's case [Co. rep. part 7.] when two countries, which have been under allegiance to the same prince, separate, all those of either country *born before the separation* takes place, may hold, or inherit lands in that country from which they are thus separated. Upon this principle the treaty of peace secured to the owners of lands in America, being British subjects, all their possessions in lands *at that time held by them*. And the reasonable construction seemed to be, that they should have their whole lives to dispose of them, or to become American citizens; if they did neither, the lands would be liable to escheat at their death, for defect of heirs, unless some *ante-natus*, or some American citizen, could establish his claim thereto, either as heir, or devisee. For it was held, that the common law, which excludes aliens from inheriting, was not altered, or intended to be altered, by that article. And the reasons for that opinion were not without weight in the minds of those who maintained them; since they conceived that the principle of excluding aliens from holding lands was founded in sound policy; adopting herein one of the reasons of the common law of England, "*that the nation might in time be subject to foreign influence.*"—In giving the most liberal construction to the treaty of peace, they did not apprehend it was meant to contravene a principle so long established among their ancestors, and so generally understood. As to acquisitions of lands, made by British subjects, in America, since the peace, the question, whether these are within the reason of the case of *ante-nati*, has not occurred: whenever it does, it is not impossible that a distinction may be taken between a title acquired by *descent* or *devise*, and one by *actual purchase*, since the *commune vinculum* has been broken. But the treaty now under discussion hath totally subverted the *wholesome maxims* of the *common law*, and of sound policy, both in the *second* and the *ninth* article, by virtue of which the subjects of Great Britain, though equally aliens as the subjects of China, may hold and transmit to their latest posterity, "*according to the nature and tenure of their respective estates and titles therein,*" lands lying in the United States, "*and held by them at present.*"—The second article very liberally grants to British subjects all their *usurped possessions* in lands within the *jurisdiction* of the *western posts*. How far this undefined term may extend, it is difficult to conjecture, whether one, five, or fifty miles.* The claim of *jurisdiction*, made by Governor Simcoe last summer, extended,

* The same gentleman to whom I am indebted for the hint contained in the note on article 6, informs me that the cession of territory to British subjects,

if I mistake not, a good way within the limits of *Vermont*, and not less than *twenty* miles from his nearest post. At this rate the cession of soil made to the subjects of Great Britain may be very extensive, and if they have been granted to hold by *fealty to the crown of Great Britain*, the ninth article confirms the tenure.* It does more; it exempts their lands from the operation of those laws which would *limit the duration of estates*, if such be the nature of their estates therein. It will be said that this article is reciprocal; nothing can be more fallacious: it is probable that the subjects of Great Britain at this day own *ten thousand times* as much land in America, as is owned by American citizens in England. Under the sanction of this article, though not within the strict wording of it, it is probable that the quantity of lands holden by British subjects in America will be ten times as great, in a few years, as at present, so that America will, in great measure, be tenanted by the *vassals* of *British landlords*.† The high price of lands in England will, probably, induce many land-holders there to exchange their property for more extensive estates in America; nor will there be wanting temptations to the monopolizers of that article to engross as large a portion of the *soil* as of the *funds* of the United States. What influence this may have over the body politic it is not hard to conjecture; especially if his *Britannic majesty* himself, who is reported to be a considerable stockholder in the *American funds*, should feel the same inclination to speculate in lands: he might, probably, in a few years engross so large a portion of them, as to revive his claim of supreme lord of the United States of America.

X. The tenth article stipulates that there shall be no sequestration or confiscation of debts, or property in the funds, or in public or private banks, in any event of war between the two nations.—One of the reasons upon which this article was probably founded, was slightly touched upon above—His *Britannic majesty*, it is said, either allured by the prospect of

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comprehended in the second article; will probably amount to a grant more than equal to the states of Virginia and Kentucky, in extent, and of the most valuable lands in the United States.

* How far this article may tend to revive the *proprietary rights* of Lord Fairfax's heirs or devisees, and the Maryland and Pennsylvania proprietaries, may be worthy of more consideration than I have been able to bestow upon the subject.

† The settlements now making in some part of the state of New York by an English gentlemen, whose name, I think, is Pulteney, upon an estate containing about half a million of acres, may serve as an evidence of the probability of this conjecture.

higher interest, or alarmed for the security of his immense property in the European banks, has lately condescended to become a creditor of the United States. The word *subjects* is dropped in this article, and the more comprehensive term *individuals*, is substituted for it: this being *nomen generalissimum*, may be supposed to extend to the *king himself*; for the rule that the king is not *bound by any law*, unless he be specially *named* therein, does not apply to those laws where he is to derive a *benefit* from general words. As this article, therefore, was not so much calculated to *bind*, as to *benefit* him, it was unnecessary, and would have been *indecent* to *name* him specially. His majesty's example has, there is great reason to believe, been followed by a number of his subjects—I know a gentleman who purchased *half a million of dollars* in the three per cents, in one day, for persons residing in London. The effect of this article will probably be a considerable increase of *British stockholders*.

But this article deserves further consideration in another point of view. When Great Britain, in the course of the late war, began to exercise every act of depredation upon the property of the people of America, as well as cruelty upon their persons, the states, then sovereign and independent, by way of retaliation, thought proper to sequester and confiscate British property in America.* And when his Britannic majesty's ships of war and privateers, commenced their present system of spoliation and aggression on the commerce of the citizens of America, the *house of representatives in congress*, by a *very large majority*, resolved to sequester British property in the United States, in order to *secure some indemnification* to their suffering constituents. This measure, as was formerly mentioned, was lost in the senate by the *casting vote* of the vice-president. The precedent was alarming, and might be renewed when the vice-president might not hold *the balance in his own hands*. The chief justice of the United States had judicially declared (tho' that opinion was over-ruled) that the states had no right to confiscate or sequester their enemies' property; the envoy extraordinary made no difficulty in giving a diplomatic sanction to these opinions, nor did he hesitate to remove all the horrors which his Britannic majesty may be supposed to have felt, on the score of his money in the funds and banks of the United States.—If national justice were always administered without regard to the *right of the strongest*, very far should I be

* This was done at the "*earnest recommendation*" of Congress, November 27, 1777.—See their journals.

from condemning an article intended to secure private property, and to confirm private confidence. But, every stipulation that abridges the exercise of *defensive measures* by a *weak nation*, how repugnant soever such measures may appear to the ordinary rules of justice, in civil cases, is, in fact, the subjection of such a nation, and all its rights, to the insolence, injustice, and rapacity of the *stronger*.—If a state of war between two nations will justify seizing the property of their respective people, by violence, wheresoever it can be found, will not the same cause justify us in indemnifying ourselves at the expense of our enemy in any other mode? And if the relative force of the two nations renders this impossible by other means, by what refinement in political morality are we forbidden to avail ourselves of such means of retaliation or indemnification as the nature of things permits? Suppose Great Britain still obstinately to persist in her depredations on our commerce, and detention of the western posts; suppose her to renew the war which she formerly waged with such fury and cruelty against America; what act of retaliation could America commit, or how recompense herself for her losses, but by confiscating the property of British subjects, or by carrying the war into Canada? If humanity were to decide which of these measures ought to be preferred, she would probably determine very differently from the envoy extraordinary.—She would tell us, that if satisfaction could be obtained without the effusion of human blood, that mode should be first adopted, rather than to carry havoc, devastation, and murder among a people whose only fault consisted in their being the *subjects of our enemy*, and our nearest neighbours.—Could we draw the lion's teeth and pare his nails, we might treat on terms of *mutual reciprocity* and equality: but till this can be effected, **the stipulation in this article** must remind us of that league between the wolves and the sheep, whereby the latter surrendered the dogs, *their only defence*, as hostages to the former. The balance of trade, *already too great* in favor of Great Britain, will hourly accumulate: and if British subjects can hold lands, and possess property in our funds and banks, without danger of loss, we may rest assured that these advantages will be turned to their proper account.—The moment a man becomes a debtor, beyond his ability to pay, his independence is totally lost. It is the same with nations that are, at the same time *weak* and *poor*. Our commercial intercourse with Great Britain being renewed upon the most beneficial footing for her, will render the United States, with the aid of this article, and the preceding, a nation of *debtors*,

both *public* and *private*, to her *merchants*, her *monied men*, her ambitious *land-holders*, and even to her *sovereign* himself.

The preceding articles, it will be remembered, are all permanent. If once ratified, they will be *irrevocable*; for the advantages thereby secured to Great Britain are so great, that she must be struck with blindness, indeed, should she ever agree to rescind one of them.—The seventh, the only one which promises any thing for America, *except admission into the western ports*, has been shown to be inadequate to a full and complete indemnification of the citizens of the United States, for the injuries they have sustained. Nor has Britain yielded any thing in any one of them, for which she has not gained a *full equivalent* and *something more*.—But though it requires very little skill in political arithmetic, to see on which side the balance lies, it may require ages to calculate the amount.

XI. and XII. Though no temporary advantage can ever be deemed an equivalent for permanent disadvantages, such as we have just noticed, it might have been reasonably expected that the succeeding articles of the treaty would have procured some recompence to the United States for such important concessions. It is, however, doubtful whether any one of the remaining articles stipulates for a single advantage on our behalf, for which we do not sacrifice thrice as much as it is worth.—The eleventh article stipulates “that there shall be reciprocal and entire perfect liberty of navigation and commerce under certain limitations and restrictions,” *not one of which* is either a limitation or restriction upon *Great Britain*, but altogether upon the *United States*. For example—ships of *any* burden, belonging to Britain, may freely enter any of the ports of the United States, and bring or carry away *any* commodities they please, and *whither* they please; whilst the freedom of navigation and commerce, by American citizens, is restricted to *vessels not exceeding seventy tons burden*, if bound to the *British West Indies*; all American vessels whatsoever being totally excluded from the British sea-ports on the continent, by the third article already mentioned. This license to trade with the British Islands, is by some persons represented as very important, even under this restriction. From the nature of the case it can only extend to the article of *provisions*, when they are not *prohibited*; for by the laws of England, neither *tobacco*, nor any other production of the United States, except *provisions*, *lumber*, naval stores, and horses, can be imported into the islands from the United States, even in *British bottoms*. Vessels of seventy tons burden are too small for the lumber trade.—The demand for naval stores and horses in the British islands, is not likely to form any

very important branch of commerce with them: the admission of *salted provisions* is altogether *arbitrary*, or, if you please, *discretionary*, depending upon the supplies which can be furnished from Great Britain and Ireland; the treaty does not alter the case in this respect—they may still be admitted or rejected; they have been often *admitted*, and as often *prohibited*, within the last ten years; sometimes the *admission* has been confined to British bottoms; at others, extended to *all vessels whatsoever*, without limitation as to their burden. I appeal to the repeated proclamations authorizing the importation of *provisions* in *foreign bottoms*, which have appeared in the gazettes of all the islands, and of the United States, for a dozen years past, to prove this fact. It is a most important fact, and shows that the existence of the British sugar colonies depends upon the United States of America. For the policy of Great Britain, ever since the peace, has been to exclude the citizens of America and their vessels from any intercourse or commerce with her sugar colonies; a relaxation from this policy has never been produced but by the most *cogent necessity*; the frequent repetition of the proclamations, *inviting our vessels into their ports*, proves this cogent necessity to be *very frequent*, also; which fully authorizes this conclusion, *that those colonies could not be subsisted without the aid of the United States*. This being the case, it was in our power to *dictate our own terms*, instead of submitting to such as are at once *degrading and destructive* to our *commercial interests*.—We shall be told that the conduct of Britain is agreeable to the *colonial law* of all nations. But this law presupposes that the parent country is capable of supporting her colonies without the aid of any foreign country whatsoever. This is not the case with Great Britain—She must, therefore, submit to reasonable terms from a nation abounding with those things, *without which her colonies cannot exist, or sacrifice her colonies*. This would be equally *unwise, inhuman, and unjust* on her part. The *necessity* of an intercourse between the United States and her colonies was, therefore, altogether on *her part*, though the *submission and restriction* is upon *ours*, only. A decrepid veteran without any weapon for his defence, dictating terms of submission to a robust young soldier with arms in his hands, would scarcely exhibit a more extraordinary instance of successful arrogance, or of abject condescension.—The commerce with the sugar islands was one of those strong holds of negotiation, on the part of the United States, which ought never to have been abandoned. The envoy extraordinary could not have been ignorant of this, nor of the sentiments of a *large majority* of that body to whom, *in conjunction with the senate and the president, it belongs, by the*

constitution, to regulate commerce with foreign nations. His zeal for negociation seems to have made him lose sight of every other object: and no doubt, from the expedition with which this important treaty was concluded, every obstacle, which might for a moment retard its completion, was instantly waved on the side of the American negociator.

Not less extraordinary is the stipulation contained in the succeeding clause of the same article, which declares, that during the continuance thereof, the United States will prohibit and restrain the carrying *any melasses, coffee, cocoa, or cotton*, in American vessels, either from the *sugar islands*, or the *United States*, to any part of the world, except the United States. Never was a more humiliating concession proposed or acceded to, in a commercial treaty. The interdiction extends not only to the produce of the English sugar islands, but to similar productions from any other part of the globe. This was a decided stroke at the commerce between America and the possessions of every other nation in the West Indies, whether French, Dutch, Spanish, Danish, or Swedish! Britain supposing the produce of her islands sufficient for the consumption of the United States, or rather, determining, if possible, to limit their consumption to what her islands can supply, thus secures a monopoly by interdicting the exportation of any surplus of their productions, or similar productions of other countries; and moreover, lays a foundation for the right of *searching* all our vessels, and, upon the slightest pretext, detaining or carrying them into her own ports for *adjudication*, if it should appear that they have on board any of these articles *beyond reasonable sea-stores*. Surely by some strange effect of magic, the envoy extraordinary had lost all memory of events subsequent to the year 1763, and conceived himself bound to receive as law, whatever the British secretary of state was pleased to dictate to him! Or was this concession the result of his fears for the fate of the French colonies, that they would either be desolated, or become an appendage to Great Britain? Or did he conceive that such a *restricted* commerce as he has stipulated for with the British colonies, *clogged with restrictions upon our commerce with all other parts of the globe*, was more valuable than all our West India trade put together? Surely the productions of those islands must have been rendered precious beyond measure in the eyes of the envoy extraordinary when he consented to this article!

There is yet another light in which this article must be placed, to give us a full view of its merits. *Congress*, that is, the *house of representatives* and *senate*, with the concurrence of

the *president* of the United States, are the *constitutional* organs for the regulation of commerce. Here, the envoy extraordinary undertakes to regulate it by means of the *president* and *senate, only*, without reference to the *house of representatives*; thus taking upon himself to *new-model the constitution*, or to dictate a law to *congress*. For either the president and senate must *regulate commerce*, pursuant to this article, without the concurrence of the house of representatives, or that house is bound, *nolens volens, to pass a law pursuant to this article*. Whether that house will manifest the same compliance with the opinions of the envoy extraordinary, as he appears to have shown to those of the British secretary of state, remains to be seen hereafter.

XIII. Weary of concessions without consideration—of compliances without ostensible motives—and of humiliations too degrading even for colonies, I turn my eyes towards that gleam of liberality which appears, on the part of Great Britain, in the 13th article, by which some conveniencies have been procured for our citizens trading to the East Indies. Yet even here, restrictions evince the jealousy of that nation; no American citizen being permitted to reside in any of her territories in that quarter of the globe, in which she has acquired so extensive an influence; whilst *British subjects* may be *lords of manors* in the United States from generation to generation. The 15th article, expressly reserving to the British government “the right of imposing such a duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods when imported into the United States in British or in American vessels,” has, in truth, frittered away the commercial advantages to have been expected from this article, to nothing more than a grant of the ordinary rights of hospitality.

XIV. and XV. The 14th article, relating wholly to the intercourse between the British European territories, and the United States, reciprocally, secures those rights which are common between civilized nations in peace. But the 15th article virtually extends to Great Britain all the commercial advantages granted by America to the most favored nations. The favors of the United States, like those of a lady of pleasure, have been granted to so many, as to be from henceforth beneath the solicitation of any.—The first grant of them to France gained a cordial return of affection: The last grant will probably annihilate the recollection, as well as the value, of the first. To detach the United States from the affectionate attachment to that nation, which gratitude and a variety of concurrent causes had produced, as it has been the constant desire

of Great Britain, was, unquestionably, one of the great objects of the present treaty, as we shall have occasion to observe hereafter.

XVI. and XVII. The former of these articles relating only to the appointment of consuls, I shall pass it over. The latter stipulates, that vessels captured or detained on just suspicion of having on board enemy's property, or contraband goods, shall be brought to the nearest, or *most convenient* port for *adjudication*. The alternative leaves to the *captor* the right of determining between the *nearest* and the *most convenient* port; and the latter will, in all cases, be determined by the *convenience of the captor*, instead of the party arrested. It sanctions the right of *stopping, searching, detaining, and carrying out of the course of her voyage, any vessel* belonging to citizens of the United States, during *any* war that Britain may be engaged in; that is, upon a general average, about *one half her time and ours*. It might have been expected that the envoy extraordinary in his great ambition to meliorate the laws and usages of nations, would have insisted, that *free ships should make free goods*; that *the commerce of a neutral nation should not be interrupted by those at war*, except in the case of contraband goods carrying to an enemy; that *no search should be permitted upon the high seas, under any pretext whatsoever*; that *no ship of war, or privateer should approach within cannon shot*; nor *chase nor turn any neutral vessel out of her course*; nor send more than *two or three men* to enter on board of her; and that *full faith and credence* should be given to the *sea letters* with which such vessels might be furnished. Examples of similar stipulations might be found in our treaties with *France, Holland, Sweden, and Prussia*; and even his *majesty of Morocco* has condescended to insert some of them in his treaty with us. But his Britannic majesty's ships of war and privateers are not to be restrained from any measures which their *suspensions* may lead them to pursue, if they "*forbear doing any damage or committing any outrage*;" words of such latitude of import, as to sanctify a thousand injuries and provocations, such as were touched upon under the seventh article, for which no compensation can ever be obtained; or even expected, without pursuing the offender half over the globe. Upon what ground, we may ask, was this distinction made? Are the officers and crews of his Britannic majesty's ships of war and privateers so remarkably observant of the rights of neutral nations, and the laws of courtesy, that we should trust them more than any others? The envoy extraordinary must surely have forgot, that to put a stop to *their insolence and rapacity* was one of the most important objects of *his mission*.

XVIII. Concession following concession fills up almost the whole that remains to be considered of this ill-favored treaty. *Ship-timber, tar, hemp, sails, sheet-copper, and generally whatever may serve directly for the equipment of vessels*, unwrought iron and fir plank excepted, are by this article added to the list of contraband goods, though *expressly excepted* by former treaties with other nations. Upon what principle was this new concession made to Great Britain, in preference to all other nations? Was it, because these articles are deemed of the first necessity to *France* during the present war? Did the envoy extraordinary recollect that most of these are *staple commodities* of the United States? That to make them *contraband* amounts to an *actual prohibition of the exportation of them in our own vessels*, whenever Great Britain chooses to go to war? Will not the powers at war with Great Britain, challenge an equal right to consider these articles as contraband, and seize and confiscate them in their turn, if destined for our *new, favorite ally*?

The same article admits, that provisions and other articles in general *not contraband*, may, in certain cases, become contraband, according to the existing law of nations. Until the present war with France, the right of interdicting commerce between a neutral nation and an enemy, was, by the *modern law of nations* (a term for which the envoy extraordinary in his *judicial capacity* always affected great respect) confined to the single case of a place *besieged, or blockaded*.* True it is, that *England*, and the *United Provinces*, something more than a century ago, agreed to notify to all states, *not at war with France*, that they would attack, and previously declared *every ship bound to, or coming out of the harbours of that kingdom, lawful prize*. This precedent was copied by the enemies of France in the present war. *Sweden and Denmark*, on the former occasion, *as well as on the latter*, entered into a treaty for maintaining their rights, and *obtaining satisfaction*, and they *obtained it accordingly on both occasions*. America, on the contrary, kisses the rod, and crouches beneath the lash of the insolent dictatress of nations. The effect of this submission will probably amount to a total prohibition of the trade of America, with all nations against whom Great Britain is engaged in a war. There is not in all Europe, and scarcely in the world, a country so little capable of being put into a state of siege, or blockade, as *France*. Yet we have seen her

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* The rights of neutral nations in respect to their commerce, and the sense that *our government* entertained of them two years ago, are admirably shown, in a letter from Mr. Jefferson, when secretary of state, to Mr. Pinckney our then minister at the court of Great Britain, dated September 7, 1793. See the papers accompanying the president's message of December 5, 1793, page 147.

formally declared to be in that state; we have, in consequence, seen our commerce with her prohibited, our vessels seized, their cargoes converted to the use of the captors; and our envoy extraordinary has given his sanction to all these proceedings; stipulating only, that in future cases, a *reasonable mercantile profit* (of which the owner has no right to judge) shall be allowed for the cargoes thus diverted from that channel, which the prospect of a beneficial voyage had induced the merchant to pursue; and that the vessels shall be paid their freight. Even the governors of the little West India Islands belonging to Great Britain, assume the right of circumscribing, and prohibiting the commerce of America, by declaring all the French islands, in a state of blockade, whilst they have not force enough to protect their own governments.* How degraded must that nation be, whose commerce may be interdicted by the proclamation of a colonial governor, or a military commander in the service of a foreign nation!

XIX. The nineteenth article stipulates, that the commanders of ships of war and privateers shall forbear doing damage, or committing any outrage on those of the other party; and if they act contrary, they shall be punished and make reparation. I have before noticed the probable effect of this stipulation; it may prevent some *few enormous injuries*, but will not in the least check lesser abuses. That insolence, and those less atrocious acts of vexation and oppression, which the *basbaws of the sea*, and those licensed pirates, *privateersmen*, are so prone to commit, will still continue to be exercised with all the wantonness of conscious security, and impunity. A cruiser belonging to one of the British islands, stops a ship bound to Europe; searches her; rifles her; insults the captain; abuses his seamen; impresses some of them, under pretext that they are British subjects; and after all these atrocities, permits the ship to proceed. What satisfaction can be obtained in such a case? Shall the master of the merchant ship alter his voyage, and go to the port to which the privateer belongs, to obtain reparation? The idea is absurd. He must submit to the ill treatment he has received, and consider his deliverance from the hands of such ruffians, as ample recompence for his sufferings. Had the envoy extraordinary condescended to look into our treaty with *France*, or *Holland*, he might have found an additional article, more effectually calculated to give security to commerce, as

* And such a proclamation, as appears by a late case, has been considered by the court of delegates in England, upon an appeal from Bermuda, to be a sufficient ground to render a vessel liable, though her voyage had been begun and her passage almost finished, before it issued.

well as to the persons of those engaged in pursuit of it, by providing, "That if the ships of one of the parties shall be met with, either sailing along the coasts, or on the high seas, by any ship of war or privateer of the other, the said ships of war or privateers, for the avoiding any disorder, *shall remain out of cannon shot*, from the merchant ship; but may send a boat on board and may *enter her*, to the number of two or three men only, to whom the master shall *exhibit his passport*; and thereupon the merchant ship may pursue her voyage, so as it shall not be lawful to molest, or *search her* in any manner, or *to give her chase*, or *to force her to quit her intended course*." One such article was worth a thousand, stipulating for indemnification from *rovers*, or the punishment of rascals whose vagrant life effectually screens them from the pursuit of justice. Why then was such an article omitted in a treaty with Great Britain? We must seek the cause in that spirit of concession and submission, which breathes through every article of this coup d'essai of the envoy extraordinary.

XX. The reciprocal exclusion of pirates, and punishment of such as may receive, harbour, or assist them, for which this article stipulates, is among the few unexceptionable articles of this treaty.

XXI. How far the first part of this article, prohibiting the people of either party from accepting commissions from the enemies of the other, may be contrary to sound policy, I will not undertake to decide. I rather incline to the opposite opinion; yet I entertain some doubt of its constitutionality, in one respect. The prohibition as to privateers corresponds with our treaties with other nations; and it is most devoutly to be wished, that the civilized nations of the globe would agree to suppress so infamous a practice, as that of privateering, altogether; had the envoy extraordinary introduced such a clause into his new diplomatic code, it would have done him no less honor than he expected to derive from the suppression of confiscations, and sequestrations.

XXII. Another article stipulating for due forbearance from reprisals, in case of injuries, forms a proper article in a treaty of amity—but alas! what reprisals has the envoy extraordinary left it in the power of the United States to commit, in case of injuries from Great Britain, even after compensation shall be refused!

XXIII. Secures the rights of hospitality to British ships of war, *in all cases*, in American ports, as also to American *ships of war* (when such things shall hereafter exist) in British ports; the same hospitality is, *in case of distress*, extended to *any* American

vessel, in British ports not otherwise open to them, under certain regulations and restrictions.

XXIV. and XXV. The former prohibits privateers belonging to an enemy of either party, from arming themselves, or selling their prizes in the ports of the other. This is conformable to our treaties with other nations; the latter stipulates for the admission of ships of war, privateers, and their prizes, into the ports of the respective nations; but these articles are not to be construed, or operate contrary to former existing treaties. Similar provisions are contained in our treaties with France, Holland, &c. It seems to me, however, to be very questionable, whether good policy would not rather have led the United States to discountenance, as much as possible, the practice of *privateers*, at least, resorting to their ports in any case, but that of *absolute distress*. The practice of privateering is a violation of the rights of humanity, and is pregnant with the destruction of every moral principle among individuals. The depredations committed by these *licensed pirates*, have no effect upon the final issue of the war: they are attended with ruin and distress to thousands of innocent *individuals*, without affecting the strength of the nation; and the calamities they bring upon peaceable and harmless men, are often more numerous and destructive, than any of the *national* operations in war. If they are admitted into the ports of neutral nations, their presence is a restraint upon its commerce; for it is well known that the purpose of their visit, is to act the *spy* upon their intended prey; for which they often lie in wait even at the entrance of the port where they have been hospitably received, and supplied with the means of pursuing so nefarious an occupation.

The same article also stipulates for the protection of the ships of each party within cannon shot of the coasts, or within the bays, rivers, or ports of the other. This article is conformable to former treaties; yet I doubt how far the United States can otherwise comply with it, than by making satisfaction for what they have no power to prevent.

XXVI. This article stipulates for the security of the persons and effects of merchants, in the event of war between the two nations; in which case, while they behave peaceably, and commit no offence against the laws, they may continue to reside and carry on their trade; but if their conduct should render them suspected, and the respective governments should think proper to order them to remove, they shall be allowed twelve months to do so, with an exception, as to such as shall act contrary to the established laws. There is a spirit of liberality in this article,

highly conformable to that policy which commercial nations ought to promote. It is, moreover, in appearance, perfectly reciprocal. The misfortune is, that America has scarcely a merchant residing within the British dominions, being excluded from all her colonial territories, by stat. 12. Car. 2. and from the East Indies by the present treaty; whilst our *ports*, our *towns*, nay, every part of our country, swarms with British merchants. The benefit of this article to the citizens of the United States, in comparison of those of Great Britain, is as a *cent* to an *eagle*.

XXVII. Murderers, and persons guilty of forgery, are to be given up, on both sides. The prevention of *moral evil* is an object worthy the attention of politicians, as well in their national compacts, as in their civil institutions. This article, therefore, if it can be reconciled to the federal constitution, which is doubtful, must receive our cordial approbation, and together with the 20th and 21st, may be considered as founded in perfect reciprocity and equality. Happy should I have been to bestow the same encomium upon *all* the preceding.

XXVIII. The last article provides for the duration of the former: the first ten, as we have before observed, are permanent; the twelfth is to continue two years from the end of the war, in which Britain is now engaged; the remainder are limited to twelve years from that period. Happily for the United States, the article limited to the shortest duration, proved a stumbling block to the ratification of the whole. Should the president of the United States conceive himself to be bound by the act of the senate, it has been supposed to be in the power of his Britannic majesty to ratify the *perpetual articles*, without acceding to any amendment of the article objected to. Whether this was foreseen cannot be known. It is, however, presumable that the wisdom of the president will guard him against any act which might commit the United States so far. Whilst *any* article of a treaty is under discussion, the *whole* must be considered as in a state of negotiation and discussion; and for this reason, because it is possible the object of the one party in acceding to all the other articles, was merely with a view of obtaining such terms, as are insisted on in that one article. Viewing the subject in this light, and that it is still practicable, in the course of negotiation, not only to obtain the rescission of *some*, but the amelioration of *several* of those articles which the zeal of the envoy extraordinary prompted him to accede to: and, moreover, to procure the admission of such as appear to be indispensably necessary to constitute a part of the proposed treaty; and that the senate must again act upon the whole treaty so formed,

I shall notice some things which it does not contain : and which, to a less liberal negociator, might have appeared, not altogether unworthy of attention.

1. It *does not contain* any stipulation for compensation on account of the detention of the western posts, twelve years after they were to have been given up, by treaty. I have heard that the value of the fur trade formerly carried on by the citizens of the United States, amounted yearly to near a million dollars. The British magazines, some few years past, stated the value of the Canadian fur trade at as many pounds sterling. I cannot presume to be correct in this, as I write from memory. But if either sum be near the truth, this article would have amounted to some *millions of dollars*, in account *against his Britannic majesty*.

2. It *does not contain* any stipulation of compensation on account of the negroes, and other property belonging to the citizens of the United States, carried away in violation of the seventh article of the treaty of peace. The value of this concession (I know not with what accuracy) has been estimated at *two millions of dollars*,* more, in favor of his Britannic majesty.

3. It *does not stipulate* for any compensation to be made to the citizens of the United States, for the *arbitrary, violent, and insolent detention, imprisonment, and impressment* of their persons (while peaceably engaged in commerce) on board the ships of war, and privateers of Great Britain, during the present war with France ; nor for the manifold other personal injuries received from them. Were this article to be estimated and assessed by a jury of freemen, such, as to the honor of the British nation, have often appeared in their courts of judicature, the damages would probably be more than commensurate to those which may be awarded for the spoliations on our commerce.

4. It *does not provide* for the *prevention* of such nefarious acts in future. Whilst Americans speak the same language with the subjects of Great Britain, there will not be wanting a colour for such acts of violence and oppression. Our treaty with Holland stipulates, “ that *merchants, captains and commanders of vessels, public or private, may freely take into their service, and receive on board their vessels, seamen or others, natives or inhabitants* of the respective countries.” The concessions made to Great Britain would surely have entitled us to expect a similar clause in the treaty with her—At any rate, some stipulation which might secure the citizens of America, whether on the high seas, or on our coasts, and *even within our own bays and*

* I have lately been informed, that this estimate, independent of twelve years interest, is too low. My authority adds, that this article, after *some discussion*, was *entirely given up*, by the envoy extraordinary !!!

ports, that *personal liberty* which hath been so often violated, with impunity, by British sea officers and privateersmen, during the present war between his Britannic majesty and France, seems absolutely necessary; otherwise the citizens of America will, by *their sufferings*, be made parties in every war in which *arrogance, ambition, revenge*, or other motives, may prompt his Britannic majesty to engage.

5. It *does not stipulate* that the Indians, inhabiting within the territory, or on the borders of the United States, shall not receive any aid or supply, whatsoever, in arms, or other necessities for war, from the British government or their merchants, &c. in case of war or hostility between them and the United States.

6 It *does not stipulate* that Great Britain (instead of exciting the Algerines to annoy our commerce, and enslave our citizens, as we have too much reason to believe she has done) should use her good offices with them in favor of the United States.

7. It *does not stipulate* for the free navigation from the *lakes to the Atlantic*, through the waters immediately communicating therewith.

It may be asked—What right have we to require that Great Britain should accede to the three last mentioned articles?—The answer is not difficult:

1st, The Indians *within* the territories of the United States, are, in respect to all other nations, but more especially Great Britain, who formerly claimed, and has now renounced, the sovereignty over them, *subject to the United States*. The Indians themselves, in their several treaties with the United States, recognize *their sovereignty*, and acknowledge themselves under their *protection*. As between the United States and all other nations, the Indians are to be considered as a *tributary, dependent* people. Consequently the United States have a right to stipulate that other nations shall not aid them against the United States. They had *good reason* to suspect Great Britain of having *lately* furnished them with such aid: they had *good reason* to suspect that the hostilities lately practised by these people, upon our western frontiers, had been *fomented*, nay, even *conducted* by the agents of Great Britain.—Let the letters of the present secretary of state to Mr. Hammond, the British minister, and the message from the president of the United States to congress, upon this subject, be my vouchers. Having reason to suspect such ill-offices to have been done us, we had a right to insist that a nation to whom we were about to bind ourselves, by more than ordinary ties of amity, should, with good faith, engage neither to repeat such *ill-offices*, nor suffer them to be repeated

by any of her subjects. We had a right to expect an immediate assent to such a proposition from a nation really disposed to enter into a state of amity with us.—Good policy would, moreover, have dictated the reservation of the right of prohibiting the importation of arms, ammunition, and warlike stores, into the United States by way of the lakes, although such importation was not prohibited elsewhere. Under the existing article no such prohibition can be made, unless it be general. The British subjects, settled at the ports of the United States, on the lakes, may now “freely, for the purposes of commerce, import all such articles, and transport them whithersoever they think proper, and vend them to whomsoever they please, within the territories of the United States”—that is, to Indians as well as others. It is not improbable that a few years may show us more clearly the full effect of this generous confidence and indulgence.

2d, If the examples of France and Holland may be cited as precedents, it will be found that the treaties with *both*, stipulate for their good offices with the states of Barbary.—The strong ground that there is to suspect his Britannic majesty’s ill-offices, in that quarter, as well as with the Indians, might have suggested to the envoy extraordinary the good policy of engaging a monarch so remarkable for his good faith, to desist from his persecutions, and to promise assistance in procuring the enlargement of our fellow citizens who have been reduced to a state of slavery by those barbarians.

3d, The navigation from the lakes into the Atlantic is a concession which appears to stand nearly upon the same ground as the free navigation of the Mississippi. In a treaty, where, among numberless advantageous concessions, the free navigation of *all* our tide-waters is granted, it might have been reasonably expected that egress and ingress should have been permitted between the waters of the lakes, and those of the Atlantic. For without such a communication between the different ports of the United States on the western waters, and upon the Atlantic, the residents on the former must be constrained to export all their commodities, which cannot be brought down the Hudson, or other less convenient routes, to Great Britain; and that too, in British ships: for the vessels of the United States not being permitted to enter the St. Lawrence from the sea—and no vessel being permitted to trade from Canada, except such as are British, the citizens of America (if any should ever obtain a settlement on the lakes) must export all their bulky commodities, in the ships of that nation, to Great Britain or her colonies only. This, therefore, must operate as a monopoly in favor of Great Britain, in respect to all bulky articles, and gives

her a preference in every other: and though in this case we had not the same power of dictating our own terms, as in the communication with the West India islands, so able a negotiator as the envoy extraordinary was *supposed to be*, might assuredly have obtained a concession in this place, as a retribution for the favors granted to Great Britain in the other. This was the rather to have been expected, as the envoy extraordinary could not but be aware that Spain would avail herself of so good a reason for not yielding to our demand of the free navigation of the Mississippi. Will not our concessions in this treaty, strengthen the tone of her refusal? When the envoy extraordinary, then minister for foreign affairs, endeavoured to persuade congress to cede the navigation of the Mississippi to Spain, for twenty-five years, he contended that the acceptance of such a concession on the part of Spain, would operate as a tacit acknowledgment of the right of the United States, ever after. I will not controvert this diplomatic inference, though, probably, the court of Spain would not have been so complaisant.—But in the treaty with Great Britain, we see nothing that could, either immediately or eventually, give us the chance of a similar benefit. On the contrary, the subject is consigned, in silence, to perpetual oblivion.

From the preceding investigation of this treaty, are we not fully justified in drawing the following conclusion:—That

As a treaty of AMITY, it is *partial and defective*;
 As a treaty of COMMERCE, it is *not reciprocal*;
 As a treaty of NAVIGATION, it is *humiliating*;
 And it is, in *other respects*, *destructive to the prosperity, security, and independence of the United States*; and *subversive of the CONSTITUTION*?

1. It is *partial*, and *defective* as a treaty of *amity*; because, while it provides the *fullest satisfaction* for the pretended causes of complaint, on the part of Great Britain*, no *adequate reparation* is obtained for former injuries, and breaches of faith towards the United States†, nor any security against a wanton repetition of them‡: and because there is not that interchange of good offices secured in this, as in former treaties between the United States and other nations. ||

2. As a treaty of commerce it is not reciprocal; because it concedes to the merchants, subjects, and ships of Great Bri-

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* See remarks on article 6.

† See remarks on article 7. See also page 30.

‡ See remarks on articles 7. and 19. See also page 30.

|| See page 30, 31, 32.

tain, greater privileges than are granted to the citizens and ships of the United States within the territories of Great Britain.*

3. As a treaty of navigation it is humiliating; because it exposes the vessels belonging to citizens of the United States, to be *stopped, searched, and turned out of their course upon suspicion*, in cases where those of Great Britain cannot be exposed to similar inconveniencies†; and because, by limiting the size of our vessels, in certain cases, it has an evident tendency to degrade the maritime interest and force of the United States.†

4. It is, in other respects, destructive to the prosperity, security and independence of the United States; because it cedes to the subjects of a foreign nation, the right of soil within an undefined extent of territory, whose value and importance to the United States is conceived to be immense‡: because it admits aliens to hold and inherit lands within the United States, and to reside therein, whilst they may be subjects, owing allegiance to a sovereign actually engaged in war with the United States‡; because it tends to detach us from our ancient ally, the French nation, by giving a preference to her most inveterate enemy||: and because it deprives the United States of the right of self-defence, and the means of retaliation in case of hostility§, or unjust aggression from a nation whose arrogance and injustice we have more than once experienced.

5. It is subversive of the constitution of the United States; because it establishes a tribunal incompatible with the constitution, and assigns to it jurisdiction in cases expressly vested by the constitution in the judicial courts of the United States¶; and because the decisions of this tribunal are paramount to the judgments of the constitutional courts¶; and because it tends to wrest from the *whole body of congress* its constitutional powers, and to transfer the same to a part of that body only; or to subject the measures of *one of the component parts of congress* to the absolute controul of the other two.**

A variety of other observations, equally important, might, no doubt, have suggested themselves to a person who had full leisure to examine this subject, and may be met with in the several publications that have already appeared. Without pretending to abilities extensive enough to embrace the whole, I shall now hasten to a conclusion.

* See remarks on articles 3. 12. 13. 26.

† See remarks on articles 12. 17.

‡ See remarks on article 9.

|| See remarks on article 18.

§ See remarks on article 10.

¶ See remarks on article 6. and note thereon.

** See remarks on article 12. last part.

I am well aware that it will be contended by the advocates for the treaty, that a refusal to ratify it will bring on a war; or must continue matters between us and Great Britain, in their present state of unredressed wrongs, and a passive acquiescence therein. I shall add a few words by way of answer.

1. As to the danger of producing a war. 1st, The refusal to enter into a state of amity, or strict commercial connexion, or to form a treaty on any subject, with a nation with whom we are at peace, unless such refusal should amount to a denial of just compensation for injuries complained of, is no cause of war between nations. Whenever Great Britain may choose to commence a war with the United States, she will not want a pretext. At present the treaty itself is the most unequivocal proof, that she hath scarcely the shadow of complaint; for the cases to which the sixth article can extend, even with all the latitude which the liberality of the envoy extraordinary hath given it, are not attributable to the want either of national faith or justice, but to the operation of those means of self-defence which the law of nations permits, or of general laws, founded on the emergencies of the times. The detention of the western posts, alone, would more than balance the account, in a single year, if stated according to the principles of justice. As to the captures made within the jurisdiction of the United States, or by vessels armed therein, Mr. Jefferson's letter shows the readiness of our government to remove all cause of complaint, on that head. 2d, Great Britain derives such immense advantages from her commerce with America, that nothing short of a state of lunacy could prompt her to interrupt it, for the sake of reparation on either of the before mentioned accounts. 3d, The immense property which her merchants, her monied men, and even her *sovereign* holds in the funds and banks of the United States, or have due to them from individuals, is, *until the present treaty shall be ratified*, a farther security against those hostile aggressions, to which the fear of sequestration, or confiscation, gave so sudden and unexpected a check. 4th, She has her hands so full already, that, much addicted as she is to hostility, she will, probably, for the present, avoid increasing the number of her enemies.

2. As to the redress of wrongs. This is so partial and inadequate in the present treaty, that no great injury can accrue from delaying to accept it; nor does the treaty contain such security against the repetition of them, as should prompt us, on that account, to accept of the partial compensation that it holds forth. Much less are the compensation and security provided by the treaty, such as ought to be accepted in lieu of *those claims* which

are passed over in *silence*. The surrender of the western posts, were it not by the terms of this treaty an object greatly diminished in its importance to the United States, is an event still so *remote* (not to add *uncertain*) as not to justify the precipitate adoption of a measure calculated to impair the value of the acquisition, or render it totally useless.

3d, The suspension of the 12th article, by the advice of the senate, having effectually retarded the final ratification of the treaty, the same train of negociation which must be resorted to, for the adjustment of that article, so as to be acceptable to the senate, may doubtless be recurred to for *adjusting other objectionable points*.

No inconvenience, therefore, can reasonably be apprehended from the *non-ratification* of the treaty in its present form. Having been communicated to the people, the executive are now better able to form a judgment of the public mind, and to weigh objections which perhaps had not before occurred; and the people of the United States with confidence hope, that the *president* will not only attend to their reasons, but pay respect to the *general will of that people*, whose affectionate confidence and authority he possesses on the present momentous occasion. How far these remarks may accord with the *general wishes* and *sentiments* of the people, it remains for *him* to determine.

When the constitution of the United States was adopted in *Virginia*, the convention, among the other amendments, proposed, "That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the senate; and no treaty, *ceding*, contracting, or suspending the *territorial rights* or claims of the United States or any of them; or their or any of their rights or claims to fishing in the American seas, or *navigating the American rivers*, shall be made, but in cases of the most urgent and extreme necessity; nor shall any *such treaty* be ratified without the concurrence of *three-fourths* of the whole number of members of both houses respectively."—North Carolina proposed the same amendment. On the present occasion, the people of the United States will be led to consider, how far some amendment to this part of the constitution is become necessary.

COLUMBUS.

Virginia, August 6, 1793



